

## Internal Revenue Service

Number: **201645004**

Release Date: 11/4/2016

Index Number: 9100.22-00, 831.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:FIP:B04

PLR-104129-16

Date:

August 01, 2016

Taxpayer	=
State	=
Date A	=
Date B	=
Date C	=
Date D	=
Date E	=
Year 1	=
Year 2	=
Irrevocable Trust	=
Individual	=
Tax Professional	=

Dear :

This letter is in response to Taxpayer's request, pursuant to § 301.9100-3 of the Procedure and Administration Regulations, requesting an extension of time to make the election under § 831(b)(2)(A).

### FACTS

Taxpayer represents that it was formed as a corporation on Date A of Year 1 under the laws of State and licensed as an insurance company in State on Date B of Year 1 to provide property and casualty insurance coverage. Taxpayer commenced operations as an insurance company upon receipt of its insurance license. Taxpayer represents that it qualifies as a property and casualty insurance company under Part II of Subchapter L of the Internal Revenue Code.

All of Taxpayer's stock is owned by Trust. Individual is Taxpayer's President.

Taxpayer filed a timely request for extension of time to file its Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return, for the tax year ending on Date C of Year 1, which extended the due date for filing the tax return to Date D of Year 2.

Taxpayer sent its financial information to its external business administrator for the purpose, among other things, of coordinating the preparation of the tax return with Tax Professional for Taxpayer. Taxpayer's return information was then sent to Individual, Taxpayer's President, for review and approval. Individual forwarded the return information to Tax Professional for preparation of the tax return. Taxpayer relied upon Tax Professional to timely prepare the return and send the return to Individual for execution and filing. Unfortunately due to oversights at Tax Professional's office, the return was not prepared in time for Taxpayer to file its tax return within the due date which would have contained the timely filed § 831(b) election statement. Shortly, thereafter the return was filed on Date E of Year 2 which attached a § 831(b) election statement.

Taxpayer represents that it acted reasonably and in good faith with respect to the matters set forth in the ruling request. It failed to make a timely § 831(b) election because, after exercising reasonable diligence (taking into account the experience of Taxpayer's President, as regards insurance tax matters and complexity of the return and issue at hand), Taxpayer was unaware of the necessity for making the election for the tax year ending on Date E of Year 1; Taxpayer had reasonably relied on a qualified tax professional with respect to such matters. Furthermore, the tax professional on which the Taxpayer's President regularly relies did not advise Taxpayer to make the election until after the filing deadline for a Form 1120-PC had passed.

Taxpayer represents that granting relief will not result in a lower tax liability than it would have had if it had filed the § 831(b) election timely.

#### RULING REQUESTED

Taxpayer requests a ruling that, in accordance with Treas. Reg. §§ 301.9100-1 and 301.9100-3, Taxpayer is granted a reasonable period of time to make the election to be subject to the alternative tax provided in § 831(b)(2)(A) for the taxable year ending on Date C of Year 1.

#### LAW AND ANALYSIS

Section 831(a) provides that taxes, computed as provided in § 11, are imposed for each taxable year on the taxable income of every insurance company other than a life insurance company. However, § 831(b) allows certain small companies to elect to be subject to tax on their taxable investment income only. The election applies to the

taxable year for which the company made it and, as long as the company continues to qualify, for all subsequent taxable years unless revoked with the consent of the Secretary.

The time and manner to make the § 831(b)(2)(A)(ii) election is not prescribed by statute but rather is prescribed by Treas. Reg. § 301.9100-8. Pursuant to Treas. Reg. § 301.9100-8(a)(2), the election is to be made by the due date (taking into account any extensions of time to file obtained by the taxpayer) of the tax return for the first taxable year for which the election is to be effective by attaching a statement to the tax return containing the information specified in Treas. Reg. § 301.9100-8(a)(3). Accordingly, the § 831(b)(2)(A)(ii) election is a regulatory election. Treas. Reg. § 301.9100-1(b).

Under Treas. Reg. § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory or statutory election. Treas. Reg. § 301.9100-2 does not provide relief for a taxpayer to make an election under § 831(b)(2)(A)(ii) for any of the years for which relief is sought. Treas. Reg. § 301.9100-3(a) provides that a request for relief will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that it “acted reasonably and in good faith” and that “the grant of relief will not prejudice the interests of the Government.”

Under Treas. Reg. § 301.9100-3(b)(1) a taxpayer is deemed to have acted reasonably and in good faith if it:

- (i) Requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service;
- (ii) Failed to make the election because of intervening events beyond the taxpayer’s control;
- (iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer’s experience and complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) Reasonably relied on the written advice of the Internal Revenue Service;  
or
- (v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Under Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed not to have acted reasonably and in good faith if it:

- (i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;
- (ii) Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- (iii) Uses hindsight in requesting relief.

The Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Treas. Reg. § 301.9100-3(c)(1).

The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Treas. Reg. § 301.9100-3(1)(i).

Treas. Reg. § 301.9100-1(a) cautions that granting an extension of time to make an election is not a determination that the taxpayer is otherwise eligible to make the election.

Based solely on Taxpayer's representations and the additional information required under Treas. Reg. § 301.9100-3(e), Taxpayer qualifies for an extension of time to make the election under Treas. Reg. § 831(b)(2)(A)(ii). Taxpayer is deemed to have acted in good faith, as defined by Treas. Reg. § 301.9100-3(b), and the grant of relief will not prejudice the interests of the Government.

## RULING

Accordingly, under Treas. Reg. § 301.9100-3, Taxpayer is granted an extension of time until 90 days following the date of this letter to make the election provided by § 831(b)(2)(A)(ii) effective beginning for the tax year ending on Date C of Year 1, and all subsequent years provided Taxpayer continues to qualify under § 831(b) and unless revoked with the consent of the Secretary. The election should be made in a written statement filed with the appropriate service center. A copy of this letter should be attached to the § 831(b) election. A copy is enclosed for that purpose.

## CAVEATS

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by

an appropriate party. This office has not verified any of the material submitted in support of the ruling request, and it is subject to verification on examination.

Except as provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspect of this or other transactions or item of income of Taxpayer. Specifically, no ruling is made as to whether Taxpayer qualifies as an insurance company under § 831(c) and granting the extension under Treas. Reg. § 301.9100-1(a) should not be construed as a determination that Taxpayer is eligible to make the election provided by § 831(b)(2)(A)(ii) of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Alexis A. MacIvor  
Branch Chief, Branch 4  
(Financial Institutions & Products)